

MESECHOL, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Cases Nos. 168 and 173

Trial Division of the High Court

Palau District

July 23, 1959

Defendant was convicted in Palau District Court of violating municipal ordinance requiring adult residents between eighteen and sixty years of age to pay tax of labor in lieu of money, not in excess of fifteen days per month. On appeal, defendant claims ordinance is invalid under laws applicable in Trust Territory. The Trial Division of the High Court, Chief Justice E. P. Furber, held that ordinance is invalid as violation of due process clause, equal protection clause, and T.T.C., Sec. 1143.

Reversed.

1. Taxation—Payment in Labor

Ordinance requiring tax in labor in lieu of money is lacking in essential elements of valid tax and proper exercise of police power, under constitutional provisions similar to those contained in Trust Territory Bill of Rights.

2. Taxation—Payment in Labor

Intent of Trust Territory law granting power of taxation is to give taxpayer choice as to whether he will pay local taxes in cash or in labor. (T.T.C., Sec. 1143)

3. Statutes—Presumption of Validity

Validity of municipal ordinance should be determined by its substance and not its form, and not alone by what has been done but by what may be done under its provisions.

4. Taxation—Generally

In order to comply with Trust Territory law granting power of taxation, local tax must be somehow shown to be payable in amount of money that is reasonably definite. (T.T.C., Sec. 1143)

5. Taxation—Payment in Labor

Practical option must be given taxpayer to pay municipal tax whether in money or in labor that is at least roughly fair equivalent to it.

6. Constitutional Law—Equal Protection

Equal protection of laws may be denied by improper administration of law that seems fair on its face. (T.T.C., Sec. 7)

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7. Statutes—Presumption of Validity

In passing upon validity of local ordinances, Trust Territory courts will make allowances for local conditions and for exercise of wide discretion by those having legislative power.

8. Taxation—Payment in Labor

Municipal ordinance which requires adult residents to pay tax of labor in lieu of money represents extreme limit to which Trust Territory courts can reasonably be expected to go in upholding legislation.

9. Statutes—Construction

Rule of substantial unanimity in regard to validity of municipal ordinances, although providing substantial protection as social matter against widespread abuses, proceeds, on entirely different theory from that of Trust Territory Code.

10. Constitutional Law—Due Process

American theory behind Bill of Rights in United States Constitution and in Trust Territory Code is that of majority rule subject to certain rights of individuals who are in minority, which rights majority may not properly disregard no matter how large majority may be.

11. Constitutional Law—Due Process

Due process and equal protection of laws clauses in Bill of Rights impose obligation on all officials to act reasonably and fairly in accordance with established principles of justice, and not make arbitrary choices or interfere with freedom of action of individuals any more than is reasonably necessary, and obligation applies to municipalities as well as to others. (T.T.C., Sec. 7)

12. Municipalities—Generally

Municipalities are subordinate not only to any constitution under which organized, but also to laws of state or territory creating them and to Bill of Rights in Trust Territory Code.

13. Taxation—Payment in Labor

Reasonable amount of unpaid service may be required of able-bodied persons subject to reasonable alternatives, in connection with payment of taxes.

14. Taxation—Payment in Labor

Unlimited amount of labor may not be demanded of able-bodied persons in community in connection with payment of taxes.

15. Taxation—Payment in Labor

Reasonable requirement of labor of able-bodied persons in community with moderate alternatives, in connection with payment of taxes is quite different from requirement of fifteen days labor a month with apparently no alternative as matter of right.

16. Taxation—Generally

Taxation is not expected to be exactly equal.

17. Taxation—Generally

Courts must allow wide discretion to be exercised by legislative authority in determining what taxation is best and what distinctions should be made.

18. Taxation—Generally

Tax legislation must be reasonably certain, there should be evident intent to adjust burden with fair and reasonable degree of equality, and general operation of legislation should carry out this intent.

19. Custom—Applicability

In order to bring ordinance within exception of Bill of Rights regarding custom, ordinance must be either purely declaratory of present-day customary law or merely place some limitation on it. (T.T.C., Sec. 4)

20. Custom—Applicability

Where ordinance purports to give wide power to newly created body and to revive type of penalty long in disuse, it does not come within exception of Trust Territory Bill of Rights regarding custom.

21. Taxation—Payment in Labor

Municipal ordinance purporting to impose tax in labor, and making willful failure to comply with such tax a crime, is in violation of due process clause and Trust Territory law and as administered is in violation of equal protection clause of Trust Territory Code. (T.T.C., Secs. 4, 7, 1143)

FURBER, *Chief Justice*

These two appeals involve violations of Aimeliik Municipal Ordinance 3-58 by the same accused on different dates, and the defense in each case is that the sections of the ordinance involved are invalid. This ordinance was passed by the Aimeliik Municipal Council on April 18, 1958, and approved by the District Administrator of the Palau District on April 28, 1958. One of the sections in question purports to levy:—

“A tax of every adult resident of the municipality between the ages of eighteen (18) and sixty (60) years, which tax shall be paid in labor in lieu of money in accordance with the schedule of works to be determined by the council, provided that such tax in labor in lieu of money shall not be in excess of 15 days per month.”

The other section involved provides that a person wilfully failing to comply with directives under the above section

shall be "guilty of evasion of tax and upon conviction shall be imprisoned for a period of not more than 30 days or fined not more than \$50.00 or both."

The appellant argued initially that these sections are invalid because they are in violation of the following:—

United Nations Charter, Chapter XII, Article 76c.

Trusteeship Agreement for the former Japanese Mandated Islands, Article 6, subparagraph 3.

Trust Territory Code, Sections 2, 4, 1143, and 1147. After evidence had been introduced by the appellee as to the actual operation of the ordinance, the appellant further argued that the ordinance was actually administered in such a discriminatory way that it also violated the provisions of Section 7 of the Trust Territory Code prohibiting denial of the equal protection of the laws.

The appellee argued that the sections in question were valid as a proper exercise either of the power of taxation granted under Trust Territory Code Section 1143, or of the police power, and that the ordinance was designed to meet economic conditions in Aimeliik of which the court should take judicial notice.

[1] This ordinance, particularly as shown by the evidence to have been applied, is so clearly lacking, from an American point of view, in either the essential elements of a valid tax or the proper exercise of the police power under constitutional provisions similar to those contained in the Trust Territory Bill of Rights, that it seems that those concerned with its adoption and enforcement either could not have understood the implications of the Trust Territory Bill of Rights or did not give them serious enough consideration.

[2-5] It would also appear from the face of the ordinance that the legislative authorities were unduly concerned with some of the words in Section 1143 of the Trust

Territory Code rather than with the intent of the section, which appears to the court clearly to be to give the taxpayer the choice as to whether he will pay his local taxes in cash or in labor. The validity of a municipal ordinance, however, should be tested by its substance and not its form, and should be determined not alone by what has been done, but by what may be done, under its provisions. 37 Am. Jur., Municipal Corporations, § 156. The alternative right to pay the tax in money might be provided by separate enactment. The court holds, however, that in order to comply with Section 1143, a local tax must be somehow shown to be payable in an amount of money that is reasonably definite, and a practical option must be given the taxpayer to pay the tax either in money or in labor that is at least roughly a fair equivalent.

[6] "Equal protection of the laws" may be denied by the improper administration of even a law that seems fair on the basis of merely the words in it. 51 Am. Jur., Taxation, § 170. In this instance the evidence disclosed that certain people were fined, without any court action, not less than \$1.00 per day for failure to work, while all of those who were employed for regular wages were excused from the so-called labor tax entirely and left to decide for themselves what, if anything, they would contribute to the project, and still others able to work were excused from working from time to time without any fine being imposed, apparently just by asking to be excused. The court takes judicial notice that the alleged "fine" of \$1.00 per day for 15 days a month for any sustained period would be absolutely prohibitive for many of the residents of Aimeliik and would, therefore, put such a pressure on them to pay in work that it was entirely contrary to the spirit of Section 1143.

Perhaps one of the most helpful things the court can do in this opinion is to call attention to certain of the basic

principles which must be considered under Trust Territory law in adopting a municipal tax ordinance or an ordinance under the police power.

[7, 8] Both this court and the Appellate Division of the High Court have indicated in their opinions concerning the Koror Curfew Law, a willingness to make allowance for local conditions and for the exercise of wide discretion by those having legislative power. See *Rechebei Ngirasmengesong and Ngirachesimer v. Trust Territory*, 1 T.T.R. 345, 615. Those cases quite probably indicate, however, the extreme limit to which the courts can reasonably be expected to go in upholding such legislation.

[9, 10] In the District Court in the cases now under consideration, great stress was laid upon the fact that the ordinance in question had been approved by practically all of the people in the municipality, other than the accused. The court recognizes that this rule of substantial unanimity is in accord with Micronesian thinking and provides quite a substantial protection, as a social matter, against widespread abuses. It proceeds, however, on an entirely different theory from that of the Trust Territory Code. The established American theory behind the Bill of Rights found in the amendments to the U.S. Constitution, in most state constitutions, and in the Trust Territory Code, is that of majority rule subject to certain rights of individuals who are in a minority—even a minority of one—which majority may not properly disregard, no matter how large that majority may be. 11 Am. Jur., Constitutional Law, §§ 7 and 329.

It is the duty of all concerned to respect these rights, but it is also the special duty of the courts to protect them. 11 Am. Jur., Constitutional Law, § 89.

[11] The “due process” and the “equal protection of the laws” clauses in the Bill of Rights impose an obliga-

tion on all officials to act reasonably and fairly in accordance with established principles of justice, and not make arbitrary choices or interfere with the freedom of action of individuals any more than is reasonably necessary. 11 Am. Jur., Criminal Law, § 234. 12 Am. Jur., Constitutional Law, § 566. This obligation applies very definitely to municipalities as well as others. 37 Am. Jur., Municipal Corporations, §§ 156-158.

[12] In much of the American literature about this matter, these rights are frequently referred to as "constitutional rights". In the case of the Trust Territory, the Bill of Rights is in the Code, but this makes no difference as far as municipalities are concerned for they are subordinate not only to any constitution under which they are organized, but also to the laws of the state or territory creating them. 37 Am. Jur., Municipal Corporations, § 165.

[13-18] It is well established that under the usual American constitutional provisions, a reasonable amount of unpaid service may be required of able-bodied persons, subject to reasonable alternatives. 25 Am. Jur., Highways, § 84. Thus, in a leading case of *Butler v. Perry*, 240 U.S. 328, 36 S.Ct. 258, (See *U.S. Supreme Court Digest*, Vol. 9, p. 272, Sec. 3, "Labor on Highway"), a statute requiring every able-bodied male person between the ages of twenty-one and forty-five years to perform six days labor in a year on the highways of his county, or to provide an able-bodied substitute, or pay three dollars to the road overseer, was held to be valid. This does not mean, however, that an unlimited amount of such labor may be demanded. There is a very great difference between six days a year with quite moderate alternatives and a requirement of fifteen days a month with apparently no alternative as a matter of right. Similarly, taxation is not expected to be exactly equal and the courts must and will allow a wide

discretion to be exercised by the legislative authority in determining what taxation is best and what distinctions should be made, but at the same time tax legislation must be reasonably certain, there should be an evident intent to adjust the burden with a fair and reasonable degree of equality, and the general operation of the legislation should carry out this intent. 51 Am. Jur., Taxation, §§ 168, 178, and 303.

[19, 20] Some apparent effort was made early in these appeals to justify the ordinance in question as being in accord with local custom and therefore within the exception to the Bill of Rights provided by Section 14 of the Code. To bring any ordinance within that exception, however, it would have to be either purely declaratory of the present-day customary law or merely place some limitation on it. In the present instance the ordinance not only purports to give wide power to a newly created body, but also to revive a type of penalty which has been long in disuse in this connection—apparently for at least two generations.

[21] The court, therefore, holds that the section of Aimeliik Municipal Ordinance 3-58 purporting to impose a tax in labor, and the section thereof making wilful failure to comply with that tax a crime, are in violation of the “due process” clause in Section 4 of the Trust Territory Code, and of the last sentence of Section 1143, and as actually administered are also in violation of the “equal protection of the laws” clause in Section 7, and are therefore void and of no effect.

JUDGMENT

The findings and sentences of the Palau District Court in its criminal cases numbers 1151 and 1243 are set aside, the finding in each case is changed to “not guilty”, and the accused acquitted.